IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: 2026-026936

In the matter between:

JACOB GEDLEYIHLEKISA ZUMA	Applicant
and	
THE CHAIRPERSON OF THE COMMISSION:	
COMMISSIONER SISI KHAMPEPE	First Respondent
SECRETARY OF THE COMMISSION	Second Respondent
ADVOCATE ISHMAEL SEMENYA SC	Third Respondent
COMMISSIONER FRANS KGOMO	Fourth Respondent
ADVOCATE ANDREA GABRIEL SC	Fifth Respondent
CALATA GROUP	Sixth Respondent
THABO MVUYELWA MBEKI	Seventh Respondent
NATIONAL PROSECUTING AUTHORITY	Eighth Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS Ninth Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA Tenth Respondent

FILING SHEET – FIRST APPLICANT'S COMPOSITE REPLYING AFFIDAVIT

HEREWITH PRESENTED FOR SERVICE AND FILING:-

1. The First Applicant's Composite Replying Affidavit.

DATED AND SIGNED AT SANDTON ON THIS 10TH DAY OF MARCH 2026.

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AND TO: SEANEGO ATTORNEYS INC.

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NATIONAL PROSECUTING AUTHORITY	Eighth Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL AFFAIRS	Ninth Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Tenth Respondent

FIRST APPLICANT'S COMPOSITE REPLYING AFFIDAVIT
(FORMER PRESIDENT ZUMA)

J.G.Z. R.M.

I, the undersigned,

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and say that:-

1. I am an adult male citizen and former President of South Africa residing in KwaDakwadunuse, Nkandla. I am the applicant in this matter.

2. The facts stated herein, unless the context indicates otherwise, are within my own personal knowledge and are to the best of my belief both true and correct.

3. I have read the long answering affidavit deposed to by **Ishmael Anthony Mmakwana Semenya** ("**Adv Semenya SC**") purportedly on behalf of the first to fifth respondents as well as their notice in term of Rule 47 and I wish to respond thereto as set out below. To avoid prolixity and duplication I also deal compositely with the answering affidavit deposed to by **Lukhanyo Bruce Matthews Calata** ("**Mr Calata**") on behalf of the sixth respondent.

4. In this affidavit I also refer to the explanatory affidavits delivered by **Mthunzi Columbas Mhaga** on behalf of the National Prosecuting Authority ("the NPA") and **President Cyril Matamela Ramaphosa**, who are cited in my application as the eighth and tenth respondents, respectively. Both of these explanatory affidavits are very instructive if not totally dispositive of the entire application.

5. To avoid unnecessary prolixity, I deal with all the above mentioned four separate affidavits in this single and composite replying affidavit.

6. To the extent that it is necessary due to the respondents' apparent failure to understand the constituent parts of the relief sought in the consolidated Amended Notice of Motion, it will be necessary to deal piecemeal with the separate legs of the relief sought on the merits, namely:-

   6.1. the declaratory relief (Prayer 2);

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6.2. the review relief (Prayers 3 and 4);

6.3. the consequential just and equitable remedies (Prayers 6 and 8);

6.4. the alternative relief sought against the President (Prayer 6); and

6.5. punitive and/or personal costs (Prayer 9).

7. It is appropriate to first deal with a number of preliminary points and interlocutory issues upfront and before dealing with the merits, if necessary.

8. There is seemingly no opposition to the prayer 1 (urgency) and the classification of President Mbeki as a co-applicant (Prayer 5).

A: PRELIMINARY / INTERLOCUTORY MATTERS

9. Before dealing with the allegations made in the said answering affidavit it will be appropriate to first deal separately with the preliminary points raised by the parties and/or interlocutory processes initiated by the applicant for the one part and the first to fifth respondents for the other.

10. The former deals with an application for better and further discovery in terms of Rule 53(1)(b) ("the application to compel") and the latter deals with an application for the furnishment of security for costs ("the Rule 47 Notice") which has since been withdrawn, and a plethora of other legal defences or objections raised by the Commission.

11. I start with the proposal of granting some of the relief sought upfront and on an unopposed basis.

A1: The legal implications of the President's stance

12. Before going any further it will be argued that given the attitude adopted by the President, who is the tenth respondent in this matter, it may well be

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unnecessary to deal with the remaining issues in this application and to adopt a procedural short-cut, which I am in favour of and which is explained below.

13. Prayer 6 of the Amended Notice of Motion which is solely directed against the President reads as follows:-

"*directing that the first respondent be removed from being a member and/or Chairperson of the Commission, alternatively directing the tenth respondent (the President) to terminate her appointment as such with immediate effect.*"

14. The President has unambiguously stated that he does not oppose this relief. In actual fact he has gone on to indicate that he supports it in that he had officially mandated the Minister of Justice to advise the first respondent to recuse herself.

15. He further states that had he been aware of the issues raised in the applicants' applications, specifically regarding the vocational history ground, he would not have appointed the first respondent to the Commission.

16. The President correctly refers to two legal impediments which prevented him from removing the Chairperson by himself, namely:-

16.1. he was advised about the *functus officio* principle; and

16.2. he omitted to apply for re-classification as a co-applicant and therefore he technically remains a co-respondent.

17. There is therefore no legal reason militating against the court granting the relief sought on an unopposed basis. No other party has the legal right to vicariously "*oppose*" relief not directed at it when the executive decision maker against which it was directed, supports the relief.

R.M-

18. In the circumstances it will be argued at the preliminary stages that the court ought properly to consider and grant the main and/or alternative prayer 6, even before any legal arguments are advanced by any other parties.

19. Properly interpreted the two prayers are complementary in that should the main prayer 6 be granted there will be no need to consider the alternative, and vice versa.

20. That being the case, the applicants will then form a position as to the necessity of pursuing the remainder of the relief sought in the Amended Notice of Motion.

21. Depending on the instructions given by the applicants at this stage, this proposed approach may well save the court and/or the parties the trouble of navigating the complex issues making up the rest of the application. It will be argued that in terms of section 173 of the Constitution and given that this is the urgent court, the court is at large to adopt the proposed approach and to dispose of the entire application on that basis.

22. In the unlikely event that the court may not be inclined to follow this economical route, I now proceed to deal with the remaining issues.

A2: Application to compel (Response to 1st to 5th respondents' defences

23. It is anticipated that the Rule 53(1)(b) application to compel will be entertained upfront but together with the main application. It clearly has a bearing on the merits of the second ground for recusal based on actual and/or reasonably perceived bias as well as the separate but interrelated accusations of judicial misconduct and/or potential criminal charges for corruption in terms of section 8 of PRECCA.

24. In addition to what is stated in my supplementary founding affidavit, I reiterate that the application to compel is deeply anchored in the fact that the existence of the documents which have not been disclosed is not in dispute. What is in dispute is their alleged impropriety. That being the case and given the required

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strict standard of disclosure, the court ought properly to intervene in favour of effective review proceedings. In this regard reference will be made to the contents of the pleadings and/or submissions made in the Khampepe recusal application.

25. I addition I am advised that the legal principles regarding, *inter alia*, confessions and avoidance, the treatment of evidence which is peculiarly within the knowledge of a party as well as the test for circumstantial evidence, will all be invoked to base the legal duty upon the first respondent to disclose the undisclosed material specified in the Notice of Application to compel.

26. It is also not for the respondents to adjudicate on the relevance or otherwise of the disputed and undisclosed or concealed documents. In any event the test is wider than mere relevance.

27. The cagey attitude of the respondents, which is calculated to expose whistleblowers to the dangers of victimisation and retributions, is in the prevailing circumstances of this matter unreasonable and uncalled for. In any event the independent duty which ordinarily rests on the first respondent to provide a complete record remains intact.

28. The necessity for further and better discovery is further vindicated by the first to fifth respondents' own action of recently delivering a supplementary record on 23 February 2026, albeit belatedly and without seeking condonation. To the extent that the first respondent unilaterally purported to supplement the record, a punitive and personal order of costs is additionally necessitated.

29. To the extent that certain material aspects of the impugned decision are not adequately considered and/or explained in the impugned ruling and no further reasons have been furnished in respect thereof in terms of Rule 53(1)(b), then I am advised that it will be argued that the applicant must be deemed as having failed and/or refused to furnish such reasons. The legal consequences for such failure and/or refusal must follow.

R.M-

30. Most notably and rather curiously, save for the meaningless and bare denial found at paragraphs 207 to 209 of the affidavit of Semenya SC, there is no defence advanced against my detailed and well-motivated application to compel. Nothing therefore stands in the way of its granting.

31. In the circumstances the application to compel must be upheld with punitive costs.

A3: Security for costs and permission to sue a judge

32. On 20 February 2026 the first to fifth respondents delivered a notice in terms of Rule 47. Rule 47(1) reads as follows:-

"A party entitled and desiring to demand security for costs from another shall as soon as practicable after the commencement of the proceedings, deliver a notice setting forth the grounds upon which such security is claimed, and the amount demanded."

33. On 5 March 2026 I totally disputed this in a Rule 47(3) Notice delivered in which it is indicated, that:-

33.1. the respondents lacked the entitlement to demand security for costs from me, *inter alia*, because of the *Biowatch* principle;

33.2. the timing of the demand is not in line with the Rule; and/or

33.3. the stated grounds for claiming security for costs are invalid.

34. On 6 March the attorneys representing the first to fifth respondents retreated and sent a letter stating that:-

"in the interest of bringing this matter to finality, our client will not insist on the provision of security for costs by the applicant."

R.M.

35. I only refer to this development to support two arguments which will be advanced on my behalf, namely:-

35.1. the said Rule 47 Notice was a case in point that the first to fifth respondents will stop at nothing in their process of clutching at straws and grabbing any conceivable technicality to avoid dealing with the unanswerable merits of the present application and the grounds for bias; and

35.2. the conduct of the first to fifth respondents in this matter, received cumulatively and in conjunction with the material found in the two explanatory affidavits of the NPA and the President, clearly indicates that the order for punitive and/or personal costs as set out in prayer 9, are fully warranted.

36. Ironically, the withdrawal of this spurious notice has since been replaced by an equally unsustainable objection based on section 47(1) of the Superior Courts Act No. 10 of 2013.

37. The section requires that in the event of service of civil proceedings on any judge of a Superior Court the consent or permission of the head of that court must be obtained. Its purpose is to regulate proceedings against a judge both in his or her <u>personal</u> capacity or as a <u>judicial</u> officer.

38. I am advised that it will be argued that this objection too must fail, in that the section does not apply to the present proceedings because, *inter alia*:-

38.1. there is no judge who has been served with proceedings, only a Commissioner who is a member of an administrative tribunal;

38.2. the proceedings have neither been issued in a personal nor a judicial capacity but in a representative and/or official capacity as member of an organ of state;

R.M.

38.3. in any event and even if the above points are not upheld, the better view is that the section does not apply to retired judges; and/or

38.4. there is no relevant "*head of <u>that</u> court*" from whom such consent would presumably be obtained.

39. The legal position advanced above is congruent with the objective evidence of the citation of the first, fourth and fifth respondents in the founding affidavit. It is also corroborated by the Chairperson's confirmatory affidavit in which she clearly states that:-

"I depose to this affidavit in my capacity as the Chairperson of (the Commission), as appointed by the President of the Republic of South Africa, President Cyril Ramaphosa."

40. In the premises I am advised that it will be argued that this technical objection must fail.

41. Further argument will be advanced in support of these contentions.

A4: <u>The alleged non application of PAJA</u>

42. The first to fifth respondents raise the alleged non-applicability of PAJA.

43. This objection is totally misplaced and it must be dismissed.

44. The only ground advanced in support of this contention is that the impugned decision is not administrative action because it does not have an external legal effect.

45. This is self-evidently wrong because:-

45.1. the constitutional rights referred to in the papers have been allegedly infringed or threatened to be infringed;

A.M.

45.2. no intelligible response has been given to the alleged existence of prima facie criminal conduct; and

45.3. the Commission is empowered, *inter alia*, to recommend criminal prosecutions.

46. This objection must accordingly be dismissed out of hand.

A5: Alleged prohibition against midstream reviews

47. The first to fifth respondents then raise the legal objection that the review application has been brought in media *res* and the entire application must therefore be dismissed on that basis.

48. Firstly, this defence must be rejected simply on the basis that, in its own terms, it is not dispositive of the application. Even if the review relief were to be cast aside, there is no defence of *in media res* against the declaratory relief sought in prayers 1 and 5 of the Amended Notice of Motion.

49. In any event even if it is correctly confined to the (alternative) review relief, the defence is in competent because the general rule against reviews in media res is not without qualifications or exceptions which apply in the present matter, more particularly in that in the present case, the balance of convenience overwhelmingly and clearly favours the speedy resolution of the matter and the expeditious finalisation of the enquiry. This is common cause.

50. Subjecting this particular enquiry to long appeal process is not in the interests of justice.

51. In the context of the proceedings in which the alleged bias manifested itself, although ancillary to the unfinished enquiry, have been concluded in that a ruling was given.

52. Finally, the explanatory affidavits of the NPA and the President as well as the refusal to disclose relevant evidence of alleged gross misconduct and/or criminal conduct ought properly to tilt the scales in favour of finality and the continuation of the enquiry irrespective of the outcome of this application. That can only be achieved by a decision being reached without delay.

A6: Separation of powers

53. This defence is a non-starter because it is by now trite law that only the courts are empowered to test the rationality of the conduct of all organs of state, including bodies such as the Commission, members of the Executive and even the Legislature. The principle of legality cuts across all arms of the state. Separation of powers does not arise.

A7: Alleged abuse of process

54. The very suggestion that a citizen or citizens who are aggrieved by an adverse decision of an organ of state, which has *prima facie* acted *ultra vires* and in a biased manner, are guilty of abusing the court process merely by subjecting that decision to declaratory relief and/or judicial review, merely needs to be stated to be rejected.

A8: Unreasonable delay

55. The issue of unreasonable delay is based on unsustainable assumptions and/or deliberately distorted facts.

56. There was no objective basis for the Chairperson to find unreasonable delay on the objective facts.

57. Even in the event that unreasonable delay was established, which is denied, it is a legally unsound proportion to employ it as a complete bar to the constitutional challenges raised in the present application.

J.L.G
R.M.

A9: Adv Semenya's Answering Affidavits in the recusal application and in the present application

58. It is my stance that Adv Semenya SC lacked the authority to depose to the answering affidavit in the recusal application. If that is upheld, then the impugned ruling cannot stand.

59. No intelligible reasons have been articulated in the ruling or the answering affidavit why that objection was dismissed by the Chairperson.

60. I go further to raise the same objection against the deposition of the present answering affidavit in that it is not properly authorised by all the relevant respondents and/or the Commission itself.

61. It is noteworthy that this time, the Chairperson saw it fit to attach her confirmatory affidavit. In that affidavit she still remarkably fails to grant any authorisation for Semenya SC to act on hers or the Commission's behalf, does however state that:-

"*I have read the answering affidavit deposed to by ISHMAEL ANTHONY MMAKWENA SEMENYA, the Chief Evidence Leader of the Commission. I confirm the contents thereof insofar as they relate to me and to matters within my personal knowledge.*" (My emphasis).

62. It is the failure by the Chairperson, or any other Commissioner, to have done the same in respect of the answering affidavit in the Khampepe recusal application which required that affidavit to have been read as *pro non scripto*.

63. The Chairperson's impugned decision to the contrary is legally impugnable on the grounds of bias in breach of section 195 of the Constitution, section 6(2)(d) of PAJA and/or the principle of legality.

64. I am advised that this is a tacit concession that the omission to do so in the recusal application was fatal.

R.M.

65. In any event, the Commission ought properly to be represented by its Secretary, hence her citation as the second respondent. Nothing in law authorised the Chief Evidence Leader, who is in any event tainted, in the subject matter of the review, to represent the Commission or its Commissioners, let alone to represent the second respondent.

66. In the premises, the two objections ought properly to be upheld, both as a ground for review in respect of the recusal ruling and also as a procedural objection in the present application.

67. As for the proposal that it was fair for the applicants to discover the factual defences of the Chairperson for the first time in the impugned ruling, I am advised that this is a classical case of procedural irrationality.

A10: <u>The non-participation of two Commissioners in the impugned decision/ ruling</u>

68. It has been conceded that truly the Chairperson made the impugned decision, to the exclusion of the other two members of the panel which heard that application.

69. There is no legally sustainable or intelligible defence to justify this approach.

70. It is common cause that the required decision must be made by "*the Commission*".

71. Otherwise, the rhetorical question which arises is: if indeed the other two Commissioners have no role to play in making the recusal or non-recusal decision, then why did they participate in the hearing?

72. It will be argued that the decision was not taken by the authorised body and it was therefore *ultra vires*. It therefore ought properly to be declared unlawful and/or unconstitutional and set aside on that basis alone and without going into the merits of the review application.

R.M

73. Assuming that none of the preliminary issues raised above will be upheld, I now proceed to deal with the merits as contained in the four affidavits under reply, in the following order:-

73.1. the answering affidavit of Semenya SC presented on behalf of the first to fifth respondents;

73.2. the explanatory affidavit of the NPA (the eighth respondent);

73.3. the answering affidavit of Calata (on behalf of the sixth respondent); and

73.4. the explanatory affidavit of President Cyril Ramaphosa (the tenth respondent).

B: THE ANSWERING AFFIDAVIT OF THE FIRST AND FIFTH RESPONDENTS

74. In addition to what has already been pleaded above and in the founding affidavit(s), I now deal *ad seriatim* with the answering affidavit of Semenya SC. Any allegations not specifically dealt with are denied in so far as they are in conflict with my overall version.

Ad paragraphs 1 – 13

75. Save for denying the correctness of all the contents of the answering affidavit and the fact that it is "*impossible*" to deal with the affidavits *ad seriatim*, I admit these allegations.

Ad paragraphs 14 – 77

76. These issues have already been dealt with in Section B above. None of the legal points raised herein hold any water.

***Ad* paragraphs 78 – 95**

77. I deny that I was aware or ought to have been aware of the appointment of the Chairperson to the Commission.

78. I further deny that it is the case of the applicants that merely because she held certain positions in the past, the Chairperson had to recuse herself.

79. The true case(s) pleaded by the applicants, which is based on both institutional and/or subject matter bias, is more fully set out in the pleadings in the recusal and the present applications.

***Ad* paragraphs 96 – 104**

80. The issue of the temporal restriction to the scope of the work of the Commission is sufficiently dealt with in the founding affidavit.

***Ad* paragraphs 105 – 162**

81. I deny these allegations because I have no knowledge thereof in so far as they took place before I could meaningfully engage with this matter. I defer to the second applicant.

***Ad* paragraphs 163 – 177**

82. I deny that the *nemo iudex* rule only applies to judges in the traditional sense and not to administrators presiding over administrative tribunals.

83. It seems as if it is conceded that the Chairperson is a competent and compellable witness in the same way as an eye-witness to the events in a particular case. That alone is a ground for recusal.

R.M

84. Furthermore, the fact that among the key witnesses are her former colleagues in relation to the events under investigation as well as her bosses, on its own constitutes a ground for recusal.

85. I specifically deny the startling allegations that:-

> "*.... even if it is to be presumed in the applicant's favour that all relevant allegations as to the Chairperson's institutional knowledge are true and that she very well could have been called to give evidence, that evidence will be before the Commission aliunde in any event. On precisely such basis, the Chairperson's own testimony is of no necessity and there accordingly exist (sic) no legal prescripts requiring her recusal.*" (My emphasis)

_Ad_ paragraphs 178 – 187

86. These allegations are noted.

_Ad_ paragraphs 188 – 190

87. I dispute these allegations.

88. To avoid repetition, I refer to what is stated below in response to the related paragraphs 207 to 209 of the answering affidavit.

_Ad_ paragraphs 191 – 199

89. The grudging acceptance of the urgency of the application is noted as the correct approach.

90. Save as aforesaid these allegations noted.

R.M.

***Ad* paragraph 200**

91. The bare and unsubstantiated denials of the prima facie criminal conduct, or the applicability of PAJA and/or the principle of legality, are insufficient and in any event matters for argument.

***Ad* paragraph 205**

92. Similarly to the preceding paragraph, the bare denial of the allegations which support the case for the first respondent's liability for punitive and/or personal costs does not take the matter any further.

93. For the avoidance of doubt, the pleaded grounds for such an order of costs include:-

93.1. the spurious and patently meritless technical points taken;

93.2. the intransigent refusal to comply with Rule 53(1)(b);

93.3. the petty opposition to the classification of the second applicant;

93.4. the unreasonable failure to take heed of and candidly deal with the explanatory affidavits of the NPA and the President; and/or

93.5. the failure to engage without some of the key issues raised in the recusal application(s).

***Ad* paragraphs 207 – 209**

94. It is one of the most remarkable and shocking feature of this entire application that the Chairperson of the Commission has consistently gone out of her way to trivialise the crucial issue of her alleged improper, irregular and illegal communications with the Chief Evidence Leader which, if true, automatically

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disqualify her from the disputed position which requires impartiality and absence of bias.

95. As has been repeatedly pointed out, nowhere does the Chairperson (or the Chief Evidence Leader) squarely deny the existence of the alleged written exchanges. On the contrary all the objective evidence point indubitably to the admitted existence thereof, albeit indirectly so and by a process of inferential reasoning.

96. In the circumstances of this matter the evidence presented to the Commission was of sufficient cogency. The idea that "*no evidence*" was presented must be rejected out of hand. A sworn statement constitutes evidence.

97. Another remarkable feature is how the first to fifth respondents have decided to ignore and wish away the application to compel compliance with Rule 53(1)(b). Literally no direct response or opposition has been mounted, save for what is stated in paragraph 209 of the answering affidavit, which is a non-descript and bare denial.

98. That defence, read with paragraph 190, casts doubts on the existence of an "*anonymous*" whistleblower. Whistleblowers are, by definition, almost always anonymous, for obvious reasons. It is illegal to carelessly give away their identities without consent. Their disclosures must be legally and inherently protected, especially by the courts and other organs of state.

99. Secondly doubt is improperly cast on the lawfulness of the attainment of the evidence. This is in spite of all the explanations given that my uncosted version is that the information was lawfully obtained from the whistleblower whose identity I have offered to reveal subject to the usual procedural and security safeguards. These offers have never been taken up by the Commission.

100. In addition to the above, this question ought properly to be resolved by the application of the following legal principles:-

R.M.

100.1. our law, for policy reasons, protects whistleblowers;

100.2. where evidence is not seriously disputed but met with a confession and avoidance, as in the present case, then the onus or burden of proof shifts to the avoiding party;

100.3. since the application to compel is well motivated and virtually unopposed, it must be granted;

100.4. in terms of the law of evidence when facts are peculiarly within the exclusive knowledge of his opponent, ess evidence will suffice to establish a *prima facie* case;

100.5. the failure and/or refusal of a party to give an explanation when called upon to do so, may weigh heavily against him or her in the evaluation of the truth;

100.6. the uncontested admission made by the official spokesperson of the Commission, read with the non-denials of the alleged actors, points conclusively to the impugned giving of the alleged advice and coaching.

101. To be added to the above is the content of the explanatory affidavit of the National Prosecuting Authority, which is a formidable organ of state charged with the evaluation of evidence. On any objective reading of the NPA affidavit, it places a duty on the first respondent Chairperson to come clean and:-

101.1. disclose the alleged written exchanges;

101.2. explain the circumstances in which they were made; and

101.3. not to hide behind a wall of silence in the face of such serious accusations and give candid answers.

R.M.

102. The Chairperson has remarkably elected to ignore not only the application to compel but the NPA questions and legitimate enquiries. Her silence is deafening.

103. Remarkably and correctly the NPA states that:-

103.1. if true the allegations will have a profound effect on the outcome of this matter;

103.2. the parties and most importantly, the Court, must be placed in possession of all relevant material in order to decide the review; and

103.3. the lawful disclosure of the material will determine the suitability of the Chairperson.

104. The belated attempt at paragraph 209 of the answering affidavit to describe the required material as "*private communication*" is demonstrably false and a desperate afterthought. It is belied by the repeated description of the said communications as being related to the work of the Commission which is a public and not private enterprise. For example, at paragraph 81 of the impugned ruling, the Chairperson said, "*I have given no such permission to former President Zuma or anyone else for that matter, relating to the work of the Commission*". Indeed the defence of frequent communications is repeatedly presented in relation to the business of the Commission.

105. In the totality of the circumstances I am advised that it will be argued that:-

105.1. the existence of the irregular communications has been admitted;

105.2. the application to compel ought to be granted, failing which an adverse inference must be drawn against the Chairperson, more specifically that the improperly withheld evidence surely points to

wrongdoing on her part as particularly alleged by me in my Khampepe recusal application pleadings; and

105.3. the questions and issues raised by the NPA deserve to be addressed and it must be so ordered.

106. Given what has been covered above and to avoid repetition I will not deal again and separately with the NPA explanatory affidavit, save to reiterate that I am in complete agreement with its contents, which will be highlighted during legal argument to be presented on my behalf.

***Ad* paragraphs 210 – 216**

107. These bare denials do not take the matter any further and they are disputed.

***Ad* paragraphs 217 – 244**

108. Save to restate that I support and embrace the allegations and conclusions found in the affidavit of President Mbeki acting in his personal and representative capacities, I do not intend to deal with these allegations and repeat what has been stated with which I fully agree.

C: THE ANSWERING AFFIDAVIT OF THE SIXTH RESPONDENT

109. To avoid unnecessary prolixity the allegations made hereunder in this section must properly be read, with the leave of the court, together with what is stated above in respect of the vocational history ground, as well as:-

109.1. my founding affidavits as duly supplemented;

109.2. the founding affidavit filed on behalf of President Mbeki and former Ministers Mabandla, Radebe, Didiza and Kasrils;

109.3. the relevant parts of Bundle B (i.e. the Khampepe recusal papers).

110. In a nutshell the Calata Group has confined itself to raising the following issues in defence of the impugned decision/ruling of the first respondent:-

110.1. the findings in respect of delay were lawful, reasonable and/or rational;

110.2. the findings in relation to the vocational history ground were lawful, reasonable and/or rational;

110.3. the findings in relation to the actual bias or misconduct ground were lawful, reasonable and/or rational.

111. In addition to the discussions of these topics in the papers and above, which apply in equal measure under this section, I respond to these defences as set out immediately below and in respect of the specific allegations made in the answering affidavit of Mr. Calata.

112. I am also in full agreement with the relevant replying affidavit deposed to by President Mbeki in response to the Calata Group. In particular I agree that the Calata Group is not entitled to raise defences regarding bias on the part of the Chairperson which have not been raised by her or on her behalf.

***Ad* paragraphs 1 – 11**

113. Save for disputing the correctness of all the contents of the answering affidavit of Mr. Calata, I note these allegations and I do not dispute them.

***Ad* paragraph 12**

114. I deny these allegations. In amplification of such denial I reiterate that:-

114.1. There was no unreasonable delay on my part and/or that of President Mbeki in bringing the Khampepe recusal application. This is borne out by the relevant correspondence from the point of being

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made aware of the existence of the Commission and my alleged status as an implicated person to the lodgement of the said application.

114.2. The evidence put up to support the allegations of misconduct and unfairness on the part of the Chairperson is in the circumstances sufficient and cogent, particularly when read in the context of the pleadings and the record.

114.3. The evidence of the interviews is also sufficiently cogent to support the conclusion of *prima facie* gross judicial misconduct.

_Ad_ paragraphs 13 – 21

115. I reiterate that the details of the notification of the Rule 3.3 Notice only came to my attention in or about October 2025 at which time I gave instructions to my legal representatives to write to the Commission requesting for more time, for the reasons set out in the relevant correspondence.

116. I am advised that the alleged 6 – months period cited by the deponent is a deliberate misrepresentation of the correct duration which is by no means unreasonable in the true circumstances. The true "*delay*" is not more than two to three weeks. In the circumstances it is negligible to non-existent.

117. The defences listed in paragraph 19 are all unsustainable in law.

118. Save as aforesaid I admit these allegations.

_Ad_ paragraph 22

119. I deny that the evidence leaders opposed the application. If they did, I deny that it was proper and regular for the evidence leaders to oppose the application on behalf of the Chairperson and/or the Commission without any authorisation to do so. No such authorisation has been established nor does

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it emanate from any legal provision. It is an invention of the first to fifth respondents.

120. I also specifically deny that the failure of the Chairperson of the Commission to file a confirmatory affidavit confirming her alleged authorisation of Semenya SC and the truthfulness of those allegations which fall within her own personal and peculiar knowledge was "*consistent with long-standing practice*". There is no precedent for such an irregular practice. The sixth respondent is put to the proof thereof.

121. The present confirmatory affidavit of the Chairperson is all, but a concession of the point made in the preceding paragraph.

_Ad_ paragraphs 23 and 24

122. I admit these allegations.

_Ad_ paragraph 25

123. I deny the lawfulness, reasonableness and/or rationality of the Chairperson's ruling, more particularly in that:-

123.1. she failed, adequately or at all, to address some of the most material issues in dispute in the Khampepe recusal application;

123.2. she failed to apply the correct principles and tests for actual and reasonably apprehended bias;

123.3. she incorrectly rejected the cogent and/or sufficient evidence regarding the secret communications between her and Adv Semenya SC;

123.4. she failed to deal with the issue of her conflictual vocational history;

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123.5. she failed to apply the correct test for unreasonable delay.

***Ad* paragraphs 26 to 51**

124. I admit these allegations.

***Ad* paragraphs 52 and 53**

125. I admit the definition of actual bias.

126. Save as aforesaid I specifically deny that in the present matter we are dealing with allegations of bias on the part of a judge. What we are dealing with is bias on the part of a Chairperson of an administrative body, appointed by a member of the Executive who happens to be a retired judge. She is not performing judicial functions.

127. The Commission could have been chaired by an active judge, a legal practitioner or any other suitably qualified professional, including any one of the remaining Commissioners.

128. In any event the correct legal position is that if she is to be regarded as a judge her conduct is in breach of section 165 of the Constitution, read with the applicable Judicial Code. If not, her conduct is in breach of section 195 of the Constitution. Either way it amounts to disqualifying bias.

***Ad* paragraphs 54 and 55**

129. I admit the definition of and test for a reasonable apprehension of bias.

130. I deny that the double reasonableness test applies to the Chairperson of an administrative tribunal not acting in a judicial capacity. All Chairpersons and/or members of administrative tribunals are equal before the law. There can be no irrational differentiation or unfair discrimination between them which is

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simply based on their qualifications and any falling outside the roles defined in the applicable Terms of Reference, Regulations and/or Rules.

131. Legally speaking, section 84(2)(f) of the Constitution makes no distinction between a "*judicial*" Commissions of Inquiry and any other kind. I am advised that, if necessary, further legal argument will be advanced in this regard.

_Ad_ paragraphs 56 – 59

132. I deny that the presumption of judicial impartiality plays any role in the present application and/or circumstances.

133. Alternatively, the standards set out in section 165(4) of the Constitution, which prescribes against bias, has been equally breached in such a way that the Chairperson ought to be declared to have breached for Constitution and recused or removed from office on that basis alone.

134. Further alternatively and even if the alleged conduct had indeed been committed by a judge in judicial proceedings it would still constitute bias. A *fortiori* it is bias when committed in the present context.

135. Neither can the presumption of impartiality ever play any role to play in respect of conduct which is *prima facie* criminal in nature.

_Ad_ paragraphs 59 – 61

136. I deny that delay can change an illegality to legality. I am advised that it will be argued that the ***Gijima/Asla*** principle applies here.

137. I am advised that it will be argued that the words uttered by the Chairperson in her impugned ruling, that[1] "*even if I am wrong in these conclusions, there*

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1 See paragraph 111 of the impugned ruling.

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is the pressing issue of delay" (my emphasis), are fatal to the decision to dismiss the recusal application on the sole basis of delay.

138. This represents another instance of the innumerable instances of reviewability based on section 6(2)(d) of PAJA and/or the principle of illegality.

_Ad_ paragraphs 62 – 81

139. I deny that I ever became aware of the existence and/or composition of the Commission before being made aware thereof by my legal representatives subsequent to the receipt of the Rule 3.3 Notice by my office.

140. In the circumstances the relevant period of "*delay*" is a mere couple of weeks before the letter of 3 December 2026. All the exaggerated computations pleaded by the respondents are therefore misconceived and inapplicable.

141. It is false that I was "*entirely silent*" on why I waited till 3 December 2025 to raise my objections. The reasons were clearly communicated to and specifically accepted or condoned by the Commission.

142. The conclusion that but for the improper conduct I would not have brought the application is false and/or highly speculative. I only became aware of the media interviews after the news of the misconduct.

143. Even in the unlikely event that there was undue or unreasonable delay, which is denied, that would be a legally insufficient basis for trumping illegality based on actual and/or reasonably apprehended bias.

144. The contrary ruling of the Chairperson is underpinned by a material error of law and therefore reviewable.

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***Ad* paragraphs 82 – 88**

145. It is palpably false to assert that "*no evidence*" has been put up regarding the allegations of misconduct. Statements made under oath in an affidavit constitute evidence. A debate may had about the cogency or sufficiency of that evidence.

146. There is nothing unusual about the making of procedural arrangements or safeguards to protect the identity of whistleblowers from victimisation and other recriminations, including assassination. The court will be requested to take judicial notice of such measures being appropriately employed on a daily basis by other Commissions of Inquiry which are currently underway and also historically.

147. Even a mere assertion, once admitted or not meaningfully disputed, may become conclusive evidence. More so if the relevant corroborating documentation was in any event inevitably discoverable by the possessing party, as in the present case.

148. Regarding the media interviews, it is not so much the content thereof which amounts to judicial misconduct in terms of the applicable Code. It is the mere participation in such interviews which constitutes *prima facie* judicial misconduct. Such participation is not disputed and accordingly admitted. It is also proven conclusively by the relevant annexure and/or electronic link supplied. It is irrefutable. The contents of the interviews merely provide aggravation.

***Ad* paragraphs 89 – 98**

149. I deny that the Chairperson applied the correct test in respect of the vocational history ground, as already dealt with above.

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***Ad* paragraph 99**

150. I deny that it is sufficient to make bare denials of the detailed PAJA grounds of review.

***Ad* paragraphs 103 – 139**

151. I deny that either President Zuma or President Mbeki can be non-suited merely on the grounds of unreasonable delay, which is in any event not established on the present facts.

152. To avoid repetition, I refer to the responses of President Mbeki to these allegations, which responses I support and equally embrace.

153. Regarding institutional bias and/or subject matter bias I refer to what has already been pleaded above and in the relevant parts of the record.

***Ad* paragraphs 140 – 157**

154. I refer to the responses of President Mbeki which are made in his relevant founding and replying affidavits.

***Ad* paragraphs 158 – 168**

155. I admit that the relief sought against the President is solely based on the principle of legality and not PAJA.

156. I deny that such relief breaks or affects the separation of powers. Only the courts can invalidate irrational conduct on the part of any member of the Executive, including the President and grant any just and equitable remedies.

157. I deny that the applicants had any obligation to seek an interim interdict when the less costly rate of urgent final relief was also available.

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***Ad* paragraphs 169 – 180**

158. The purported opposition to President Mbeki's application to be redesignated as a co-applicant is petty and unnecessary. It forms part and parcel of the dilatory, vexatious and abusive posture adopted by the Commission. It deserves judicial censure in the form of punitive and/or personal costs, as prayed.

159. The matter easily resolves itself by the application of common sense as well as the provisions of section 173 of the Constitution.

***Ad* paragraphs 181 – 182**

160. I deny that it was not necessary for the sixth respondent to respond *ad seriatim* to the affidavits of the applicants.

161. I deny that the eminence as a jurist and/or stellar record of the Chairperson is of any relevance to these proceedings. The Code of judicial ethics and sections 165(4) of the Constitution apply in equal measure and irrespective of the personal attributes or record of a particular jurist.

162. Indeed the mere fact that the Chairperson is judicially trained, took the judicial oath of office and even made several judicial pronouncements regard the impropriety of the very same conduct for which she now stands accused, should be regarded as aggravation and not a defence, as the respondents would have it. It is evidence of *mens rea* or knowledge of unlawfulness. These factors are also relevant to the nature and scale of costs.

D: THE EXPLANATORY AFFIDAVIT OF PRESIDENT CYRIL RAMAPHOSA

163. I have also read the explanatory affidavit recently delivered by President Cyril Matamela Ramaphosa who is cited herein as the tenth respondent and as the ninth respondent in the application of President Mbeki *et al*.

R.M.

164. The contents of the said explanatory affidavit are instructive and have a heavy bearing on the outcome of the present application. None of the argumentative assertions made by Adv Semenya SC, with respect hold any water to gainsay the evidence of the President which is intended to assist the court in adjudicating this important application.

165. First, the President confirms my own suspicion that he was genuinely unaware of the conflict inherent in the vocational history of the Chairperson when he made the appointment. This is totally understandable.

166. Second, he reveals that he correctly conveyed a message to the Chairperson, via the Minister of Justice, to consider recusing herself, obviously in the interests of not jeopardising or delaying the important work of the Commission. The Chairperson apparently dug in her heels as she did in issuing the impugned ruling. That is further unreasonable and irrational conduct, in my view.

167. Third and most importantly, the President has conveyed to the Court not only that he does not oppose the relief sought by the applicants in the Amended Notice of Motion but that he is in favour of the recusal or put differently he is opposed to the impugned decision.

168. Lastly and to put it bluntly, it is abundantly clear that, legal technicalities aside, the President who is the appointing authority, has lost all confidence in the Chairperson as his chosen advisor in respect of the issues set out in the Terms of Reference.

169. In that regard it will be recalled that the applicants seek separate relief to compel the President to remove the Chairperson as a member of the Commission. That prayer is now officially unopposed, and it must accordingly be granted, irrespective of the outcome of the rest of the remedies sought. I am advised that if still necessary, legal argument will be advanced in this regard both in the written and oral arguments which will be submitted on my behalf.

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R.M.

170. In the event that the first (to fifth) respondent(s) unreasonably persist in their opposition of the application, then the case for personal and punitive costs will be strengthened.

E: CONCLUSION

171. Since the explanatory affidavit of the NPA has been extensively dealt with above in the context of the application to compel further and better discovery it will not be necessary to deal with it separately and *ad seriatim*. Suffice to restate that I am in full agreement with it.

172. In all the circumstances:-

172.1. the first to fifth respondents must be compelled to disclose all relevant written communications;

172.2. the declaratory relief ought to be granted;

172.3. the review relief ought to be granted;

172.4. the just and equitable remedies in the form of a removal from office ought properly to be granted;

172.5. alternatively, the President ought to be directed to terminate the appointment of the Chairperson; and/or

172.6. the first to fifth respondents must be ordered to pay punitive costs and the first respondent must pay the costs personally.

WHEREFORE, I persist in the relief sought in the Amended Notice of Motion.

DEPONENT

J.A.C.

R.M.

Sworn to and signed before me in 10th on this the Tuesday day of **MARCH 2026,** the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, which he regards as binding on his conscience and has no objection to taking the prescribed oath, the Regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and the Government Notice No. R1648 of 19 August 1977, R1428 of 11 July 1980 and R774 of 23 April 1992 having been duly complied with.

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